

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Construction Authority for an order authorizing the construction of two light rail transit tracks at-grade crossing West Avenue 45 in the City and County of Los Angeles, California.

Application 00-10-012
(Filed October 11, 2000)

And Related Matters.

Application 01-06-011
Application 00-11-050
Application 00-11-040
Application 00-11-034
Application 00-11-033
Application 00-11-032
Application 00-11-029
Application 00-11-016
Application 00-11-015
Application 00-10-050
Application 00-10-039
Application 00-10-033
Application 00-10-020

**DECISION AFFIRMING ASSIGNED COMMISSIONER'S
RULING AND REQUIRING ADDITIONAL EVIDENCE**

Summary

This decision will affirm the Commissioner Bilas' Assigned Commissioner's Ruling (ACR) dated November 1, 2001, which granted conditioned interim authority for the applicant to begin construction of a number of grade crossings prior to a final commission decision.

In considering whether to affirm or overrule the ACR, we will:

1. Describe the Project and the Applicant
2. Briefly describe the motion for interim authority and the opposition to the motion
3. Briefly describe the Assigned Commissioner' Ruling and various motions for reconsideration.
4. Discuss why we affirm the Commission's Ruling.

Description of the Project

Los Angeles to Pasadena Metro Blue Line (Line) will run approximately 13.6 miles from Los Angeles to Pasadena, and will be similar to the Los Angeles to Long Beach Blue Line, which has been in operation since 1990. The Line will begin at LAUPT, which is the largest train station in Southern California, serving Amtrak inter-city trains, Metrolink commuter trains, and the Red Line subway. From LAUPT it will run on aerial construction on exclusive right-of-way northward along Vignes Street and across intervening streets to a location north of College Street and east of Broadway. The Line will transition from aerial structure to ground level and continue northward on exclusive right-of-way to the approach of a new reinforced concrete bridge constructed across the Los Angeles River and the railroads that exist on its west and east banks in accordance with Decision (D.) 95-02-030 dated February 8, 1995 (A.94-08-034) and D.95-01-043 dated January 24, 1995 (A.94-08-051). The Line will continue on exclusive right-of-way across the new bridge and northward along the former right-of-way of The Atchison Topeka and Santa Fe Railway Company's (AT&SF)

Pasadena Subdivision, now owned by the Authority, to Avenue 33 in Los Angeles. Then it will continue northward on approximately 1.9 miles of semi-exclusive right-of-way in the City of Los Angeles. It will transition to street-running alignment along Marmion Way for approximately one half mile in the City of Los Angeles, then continue on approximately 4.2 miles of semi-exclusive right-of-way in the cities of Los Angeles and South Pasadena to across Del Mar Boulevard in the City of Pasadena. Included in this segment is the Arroyo Seco Bridge across State Route 110, subject of D.95-09-067 dated September 7, 1995 (A.94-11-027). The Line will continue northward on exclusive right-of-way for approximately 5 miles to the median of the I-210 Freeway and eastward within the median to the eastern boundary of the City of Pasadena.

Applicant

The Los Angeles County Metropolitan Transportation Authority (MTA) was created by the legislature pursuant to Pub. Util. Code § 130050.2 to be the successor agency to the Southern California Rapid Transit District (SCRTD) and the Los Angeles County Transportation Commission (LACTC), which ceased to exist as of April 1, 1993.

The Los Angeles to Pasadena Metro Blue Line Construction Authority (Authority) was created by the legislature pursuant to Section 132400 et seq. of the Pub. Util. Code to award and oversee all design and construction contracts for the completion of the Los Angeles to Pasadena Metro Blue Line Light Rail Project. Pursuant to §§ 132425 and 132430 of the Pub. Util. Code, MTA has transferred to the Authority all real and personal property, and other assets, as well as unencumbered balance of all local funds accumulated for completion of the project. Upon completion of the Line it will be deeded to MTA for operation and maintenance.

Motion for Interim Authority to Construct

The Authority requests interim authorization to proceed with construction of the project including construction of tracks across various public roads, highways, or streets, either grade separated or at-grade as the case may be, as proposed in each of the applications. The interim authorization would be entirely at the Authority's risk and would be effective only until the Commission reaches its final decision. The interim authorization would be subject to the following express conditions:

- “That in its testimony and pleadings in support of each of the above-captioned applications, the Authority shall not rely on any expenditures or commitments made pursuant to such interim authorization as support for the relief requested by those applications or in opposition to any protests against them;”
- “That in deciding the merits of each of the above-captioned applications, the Commission should be expected to give no consideration whatsoever to any expenses or other burdens incurred by the Authority in constructing facilities pursuant to such interim authorization;”
- “That the Authority shall not operate and shall not permit any other entity to operate any light rail vehicles upon any tracks constructed across any public road, highway, or street at grade unless and until the Commission has granted any permanent authorization required for such at grade crossings; “
- “That the Authority shall comply fully with any and all commitments, mitigation measures, and conditions previously accepted or imposed in connection with its construction plans;”
- “Any further conditions the Commission finds necessary to ensure that the Authority gains no advantage from the interim authorization requested other than the ability to construct the Project, as proposed, more promptly and efficiently, but entirely at its own risk.”

The applicant makes five arguments in support of the grant of interim relief:

A. The Authority Has Been Given a Legislative Mandate to Build the Project Within Budget and on Time.

SB 1847 (1998 Stats., c. 1021), which was signed by the Governor September 30, 1998, requires the Authority, under the supervision of the California Transportation Commission (“CTC”), to comply with the design and construction timetable imposed for the Project under the 1998 State Transportation Improvement Program (“STIP”), which essentially requires the Project to be complete by 2003.

B. The Authority Adopted and the CTC Approved a Design/Build Approach for the Project in Order to Control Costs and to Meet a Demanding Project Completion Schedule.

The Financial Plan and Project Management Plan (PMP), which delineated a design/build implementation program, were formally approved by the CTC in November 1999, as part of CTC Meeting Resolution MFP-99-13 that provided the Authority its initial \$83.2 million state funding allocation. The Authority has entered into construction contracts whereby any changes to the contractor’s schedule will result in additional compensation to be paid to the contractor. The Authority asserts that there is no additional funding available to pay for the increased compensation.

C. Inability to Install Track Across Public Roads, Highways and Streets Will Cause Unnecessary and Unbudgeted Costs to the Project and May Affect the Authority’s Ability to Complete the Project Even If the Protestants’ Challenges Ultimately Fail.

Once the contractor’s linear work along the course of the Project reaches intersections where grade crossings are proposed for construction, which will

occur by the end of October, 2001, the Authority will begin to incur unnecessary and unbudgeted costs by up to \$14 million, based on the procedural schedule set forth in the recent Scoping Memo and Ruling of Assigned Commissioner Bilas. These incremental costs will impair the Authority's ability to complete the Project within the budget and schedule limitations noted above. Cost overruns of this magnitude will bring the viability of the Project into question.

D. Interim Authorization to Install Track at Protested Crossings Entirely at the Authority's Risk Will Permit the Authority to Avoid Unnecessary and Unbudgeted Additional Costs.

The Authority considers it reasonable for it to incur the already budgeted and contracted costs as the price of avoiding a looming cost overrun that could quickly rise to the level of \$14 million.

E. The Proposed Conditions Upon the Requested Interim Authorization Ensure That the Authority Will Bear All Risks Associated With the Granting of Such Interim Relief and That No Safety Concerns Are Presented.

One of the proposed conditions provides that the Authority will not rely on any expenditure made pursuant to such interim authorization as support for more permanent authorization.

Another of the proposed conditions commits the Authority not to operate any light rail vehicles across any grade crossings that have not been permanently authorized. In addition, any movement of construction vehicles will be subject to the jurisdiction of the responsible local authorities.

Opposition to the Motion

The Motion for Interim Authority to Construct was opposed by Citizens Against the Blue Line At Grade (NOBLAG), the Rail Crossing Engineering Section of the California Public Utilities Commission staff (RCSE), Mt.

Washington Association and Ms. Jo Anne Barker (collectively Protestants) on among others the following basis:

A. The Requested Relief is disfavored under The California Environmental Quality Act (CEQA) and the CEQA Guidelines.

Here the primary argument is that it is unclear that CEQA allows for such an option as interim authority to construct in the present circumstances. Also, CEQA does not endorse any action that would foreclose the consideration of alternatives or other mitigation measures.

B. The Requested Relief Would Place an Inappropriate and Unnecessary Burden on Commission Decision-Makers

The argument is that once the Commission has authorized construction and the project is built it would be extremely difficult for the Commission to later order that construction be “un-done” at great cost of public monies.

C. The Requested Relief Will Unduly Prejudice the Protestants.

In many cases the Authority is requesting the ability to construct crossings at grade rather than separated crossings. The Authority also argues that it is precluded from considering grade-separated crossings because of budget constraints. Protestants argues therefore, that once the limited funds have been expended it will have very little chance of convincing the Commission to consider other important factors such as public health and safety which might require an order to un-do the construction and replace it with a separated crossing.

Protestants also point out that the Authority has not shown that it has the financial ability to un-do construction, remediate construction sites and implement other mitigation measures.

**D. The Requested Relief Should Not Be Granted
Because the Authority Created this Delay by not
Timely Filing its Applications with the Commission.**

The Protestants point out that the Authority could have filed its applications much earlier to allow the Commission time to properly consider each application. Instead by not filing sufficiently early, the Authority has brought on the possibility of cost over-runs upon itself. Such failure to file timely should not preclude the public's participation in the process nor impinge on the commission's ability to adequately consider the matters.

The RSCE staff also opposed the motion based on the fact that the Applicant has not agreed to all the safety measures proposed by RCSE staff. One such measure is constructing at least one of the crossings in question as a grade separated crossing. The RCSE staff also cautions the Commission to be aware of the important precedent it might create in granting the motion. The precedent may encourage others to build first and ask for approval later. This type of activity could cause serious issues for public safety.

The Assigned Commissioner's Ruling Granting the Motion

The assigned Commissioner issued a ruling on November 1, 2001, granting the motion. The Ruling was based upon several considerations:

1. Applicant alleges severe potential cost overruns caused by the time necessary to secure regulatory approval;
2. Applicant is willing to accept numerous conditions, including the cost of undoing any construction required by further order of this Commission; and
3. There would be no environmental consequences because no trains would be allowed to operate until the Commission has issued a final order in the proceeding.

The Assigned Commissioner's Ruling provided that:

- "1. Applicant may construct its light rail line in accordance with the Applications consolidated in this proceeding.

“2. In accepting this Ruling Applicant agrees not to argue or allude to any costs of remedial work attributable to construction performed under authority of this Ruling in any brief, pleading, oral argument, or *ex parte* meeting with the Commission, any Commissioners, or employee of the Commission.

“3. Applicant accepts this authority with full knowledge that one or more of the Protestants may be successful in the final Commission decision. Should this occur Applicant acknowledges it will be required to undo any construction contrary to the Commission decision. Cost of this remedial action may well exceed the cost Applicant now claims is at risk if it is not permitted to continue construction.

“4. Applicant shall give notice of its intentions with regard to this Ruling within 15 days of the date of the Ruling. All parties shall be served with this notice by Applicant.”

This Ruling by the Assigned Commissioner would become the final order of the commission after the Ruling is approved or confirmed by the Commission as provided by Pub Util Code § 310 shown below

"Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding, opinion, and order of the commission."

Ruling Contested

NOBALG, RCSE staff, Mt. Washington Association, and Jo Anne Barker have contested the Ruling. In summary the Protestants recommend that the interim authority to construct granted by the Ruling be held in abeyance until:

1. The costs and inconvenience to the neighborhood and the public of removing or modifying the safety protections at the crossings, including grade separations are minimal.

2. The Authority has demonstrated the actual costs of delay necessitating interim relief.
3. The Authority is likely to be successful on the merits with respect to their recommended safety protections at the crossings.
4. The Authority has obtained a bond sufficient to cover all costs removing or modifying the grade crossings.
5. The Authority has complied with all relevant provisions of CEQA.

Ruling Affirmed

We will affirm the Ruling of Assigned Commissioner Bilas dated November 1, 2001. We have considered the arguments against granting the motion and the arguments requesting reconsideration of the motion and elect to affirm the Ruling.

We agree that there is sufficient chance that meeting the current schedule for the proceedings will result in significant cost overruns with the possibility of preventing completion of the project. Also, the impositions of the conditions will prevent the Protestants from suffering any prejudice to their respective positions in this proceeding. Finally, with one additional condition, we agree that there will be no significant effects on the environment until a final order is issued in this proceeding because there will be no rail operations until the final order is issued.

An additional condition needed to ensure no negative environmental impacts is that there should be condition that requires we order signage that says the lines are not in operation.

Findings of Fact

1. Assigned Commissioner Bilas issued a Ruling on November 1, 2001, granting the Motion for interim authority to construct the project pending a final order by the Commission.
2. The current schedule in this proceeding may result in delays to the project.
3. Delays to the project may result in significant additional costs of the project.
4. Applicant has proposed several conditions to the granting of interim authority.
5. The conditions proposed by the Applicant will protect the protestants from any possible prejudice to their positions in this proceeding.
6. There will be no train operations until the Commission issues a final order in this proceeding.
7. Signage that is posted and makes clear that the rail lines are not in operation will help ease traffic congestion.
8. There will be no significant effect to the environment until the Commission has issued a final order in this proceeding.

Conclusions of Law

1. The Ruling of the Assigned Commissioner issued on November 1, 2001, should be affirmed.
2. The conditions proposed and augmented herein by applicant should be added as conditions to the Ruling.

O R D E R

IT IS ORDERED that:

1. The Ruling of the Assigned Commissioner granting interim authority to construct the project issued on November 1, 2001, should be affirmed.

2. The authority to construct is subject to the following conditions:
 - a. That in its testimony and pleadings in support of each of the above-captioned applications, the Authority shall not rely on any expenditures or commitments made pursuant to such interim authorization as support for the relief requested by those applications or in opposition to any protests against them;
 - b. That in deciding the merits of each of the above-captioned applications, the Commission should be expected to give no consideration whatsoever to any expenses or other burdens incurred by the Authority in constructing facilities pursuant to such interim authorization;
 - c. That the Authority shall not operate and shall not permit any other entity to operate any light rail vehicles upon any tracks constructed across any public road, highway, or street at grade unless and until the Commission has granted any permanent authorization required for such at grade crossings;
 - d. That the Authority shall comply fully with any and all commitments, mitigation measures, and conditions previously accepted or imposed in connection with its construction plans; and
 - e. Applicant shall post signage that the lines are not in operation.

This order is effective today.

Dated _____, at San Francisco, California.

II.

INTRODUCTION

Over the life of the Los Angeles to Pasadena Metro Blue Line Project (“Project”), the Authority and its predecessors in interest¹ have prepared numerous environmental review documents for the Project. The following is a chronological listing of the environmental documents (collectively, the “Environmental Documents”) prepared for the Project:

- Draft EIR, 1988 (SCH # 88042713). This document was circulated for public review in 1988. Due to changes in project design initiated in response to public comment, the Draft EIR was substantially revised and recirculated as the Revised Draft EIR in 1989. While the Final EIR supersedes this document for purposes of environmental review, comments received during public review of the Draft EIR and the Revised Draft EIR were responded to and included in the Final EIR.
- Final EIR, 1990 (SCH # 89082327). This document addressed the environmental review for both the Highland Park and North Main alternatives with various segment options, rail yards, and other facilities.
- Mitigated Negative Declaration, 1991 (SCH # 91071040). This document addressed the environmental review for the aerial structure from Downtown Los Angeles/Union Station to Chinatown.
- Final Supplemental EIR, 1993 (SCH # 92071005). This document addressed the environmental review for three alternative locations for the maintenance facility, three new station locations, and two grade separations.
- Final Supplemental EIR # 2, 1994 (SCH # 93121099). This document addressed the environmental review for a change in operations along Marmion Way, five additional street

¹ The MTA and the LACTC.

closures in Highland Park, additional property acquisitions, sound barrier modifications, a cut-and-cover tunnel option for the Marmion Way/Figueroa Street grade separation, and alternate location for a park-and-ride facility.

- Addendum # 1, 1995 (No SCH #). This document addressed the environmental review for additional property acquisitions.
- Addendum # 2, 1996 (No SCH #). This document addressed the environmental review for redesign of the Del Mar Station and transfer of entitlements.
- Addendum # 3, 2000 (SCH # 93121099). This document addressed the environmental review for minor modifications to the Project subsequent to transfer of the Project from the MTA to the Authority; including the opening of three at-grade crossings, various Project enhancements, selection of a train vehicle, and construction of an aerial pedestrian bridge at Sierra Madre Villa station.

As lead agency for the project, the Authority and its predecessors in interest had the responsibility for identifying which types of environmental documents were appropriate for the Project and overseeing preparation of those documents. The lead agency consulted with the Commission, a responsible agency with discretionary approval authority for grade crossings proposed as part of the project, during preparation of the Environmental Documents. As indicated in Exhibit 52, the Environmental Documents included by reference detailed engineering diagrams of the Project alignment, including all the proposed grade-separated and at-grade crossings. The Environmental Documents analyzed the environmental effects associated with the Project, including each of the grade crossings proposed as elements of the Project, whether at-grade or grade separated. The Commission provided written comments to the lead agency concerning analysis of those environmental effects within the purview of the Commission, primarily safety impacts related to grade

crossings. Each of the Environmental Documents above was circulated for public review to the extent required by CEQA, and approved and certified by the lead agency. The statute of limitations for challenging each of the documents has run.

Project. CEQA Guidelines § 15096(a). The Commission “shall not approve the project as proposed if [it] finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment,” but it can only do so as to “ . . . the environmental effects of those parts of the project which it decides to . . . approve.” CEQA Guidelines § 15096(g).

If the EIR for the Project identifies any significant effects, the Commission is required, to make independent findings for each significant effect of the project within the scope of its jurisdiction. CEQA Guidelines § 15096(h). CEQA Guidelines § 15091 require that the Commission’s findings be written, and accompanied by a supporting statement of facts. Under these circumstances, the Commission must also file a Notice of Determination for the project, stating that it considered the EIR or negative declaration as prepared by the Authority and its predecessors. CEQA Guidelines § 15096(i).

1. None of the Significant Effects of the Project Identified by the Environmental Documents Relate to Aspects of the Project Within the Commission’s Jurisdiction.

Pursuant to CEQA Guidelines § 15096, the Commission can take actions that would substantially lessen or avoid any significant effect of the Project that comes within its authority as a responsible agency—*i.e.*, effects associated with railroad crossings. As to all other aspects of the analysis contained in the Environmental Documents, Public Resources Code § 21167.2 and ECQA

Guidelines §§ 15096(e)(2) and 15231 apply, and the previously prepared analysis is presumed valid.

Each of the grade crossings proposed as part of the Project was analyzed for environmental effects in the Environmental Documents. The eight grade-separated crossings associated with the Chinatown Station alignment were analyzed as part of the project in the Mitigated Negative Declaration (SCH # 91071040) approved and adopted by the MTA on March 25, 1992. The four grade-separated crossings associated with the Colorado Boulevard segment and the Southwest Museum Station at-grade crossing were analyzed as part of the Project in the Final Supplemental EIR # 1 (SCH # 92071005) approved and adopted by the MTA on January 27, 1993. The grade-separated crossing at Figueroa Street and Marmion Way was analyzed as part of the Project in Final Supplemental EIR # 2 (SCH # 93121099), approved and adopted by the MTA on May 25, 1994. The environmental effects associated with the twenty-seven (27) other grade-separated crossings and twenty-seven (27) other at-grade crossings proposed as part of the Project were analyzed in the Final EIR (SCH # 89082327), approved and adopted by the MTA on March 30, 1990. Exhibit 31 (Frank), at 2-4; Exhibit 52 (Stone), at 1-3, Tables 2 and 3, at 5-8, Table B, at B-2, and Table C, at C-2.

The Environmental Documents for the Project identified seven unavoidable significant environmental effects, for which findings and Statements of Overriding Considerations (“FSOC”) were adopted.² Exhibit 11 (Frank), at 12-13. Pursuant to the analysis in the Final EIR, an FSOC was adopted for the

² FSOC # 1 was adopted by the MTA with the certification of the Revised Final EIR in 1990. FSOC # 2 was adopted by the MTA with the certification of Final Supplemental EIR # 1 in 1993. FSOC # 3 was adopted by the MTA with the certification of Final Supplemental EIR # 2 in 1994.

two unavoidable significant adverse impacts of the selected alternative:

(1) modifications to the historic Arroyo Seco Bridge; and (2) loss of parking along Marmion Way between Avenue 51 and Avenue 57.

The aforementioned modification to the historic Arroyo Seco railroad bridge across State Route 110 was identified as a significant adverse impact in the Final EIR due to the widening of the bridge deck and reinforcement of the historic structure to meet seismic safety requirements. The MTA submitted a grade crossing application for this crossing in 1994 (A.94-11-027), which was approved by the Commission in 1995 by Decision 95-09-067. The reinforcement and seismic modifications then were completed by the MTA prior to their suspension of the Project.

Pursuant to the analysis in Supplemental EIR # 1, an FSOC was adopted for four unavoidable significant adverse impacts associated with the Project changes: (1) temporary traffic impacts during construction at the Marmion Way/Figueroa Street intersection; (2) visual impacts of the then-proposed aerial structure at Marmion Way/Figueroa Street (subsequently eliminated in favor of a below-grade alternative); (3) traffic impacts at Fair Oaks and Colorado Boulevard associated with the Colorado Boulevard grade separation; and (4) visual impacts from the aerial structure for the west bank maintenance facility. Exhibit 11 (Frank), Att. A, Tab “Other, “ A-2; Tr. 652-653 (Frank). Finally, pursuant to the analysis in Supplemental EIR # 2, an FSOC was adopted for the unavoidable significant adverse vibration impacts associated with the proposed Project changes. Exhibit 11 (Frank), Att. A, Tab “Other,” A-3; Tr. 652 (Frank).

Of the 14 applications now pending before the Commission (excluding Application 00-04-022 already approved by the Commission), only two of those applications involve rail crossings for which any significant environmental

impact has been identified in the Environmental Documents: Applications 00-11-016 and 00-10-039. The visual impacts associated with the aerial structure for the west bank maintenance facility does not involve any railroad crossing application before the Commission, and is outside the purview of the Commission's discretionary approval of any aspect of the Project. Largely in response to public and City of Los Angeles comments and involvement, the aerial structure at Marmion Way/Figueroa Street was eliminated in favor of a below-grade separation, extinguishing the significant visual and short-term traffic impacts associated with that structure. *See*, Exhibit 13 (Okazaki), at 4-5, Att. C. In addition, the unavoidable significant adverse vibration impacts associated with the Project are not associated with grade crossings proposed as part of the Project but rather the entirety of the Project itself, and so are not within the Commission's jurisdiction over the Project. Therefore, the findings of the Environmental Documents as to these significant impacts are conclusive and cannot be revisited by the Commission. The remaining significant impacts are related to the following applications:

APPLICATION 00-11-016. This application seeks approval of at-grade crossings from Avenue 50 to Avenue 57 along Marmion Way. The Final EIR (1990) identified one unavoidable significant adverse impact associated with this configuration—loss of parking along Marmion Way between Avenue 51 and Avenue 57.

The loss of parking along Marmion Way is not an environmental impact within the scope of the Commission's authority over grade crossings. Rather, this impact stems from the conversion of a portion of the Marmion Way right-of-way to accommodate the proposed light rail alignment.

APPLICATION 00-10-039. This application seeks approval of grade separations at four streets in the City of Pasadena, including Colorado

Boulevard. Final Supplemental EIR # 1 found traffic at the intersection of Fair Oaks Avenue and Colorado Boulevard to be impacted beyond an acceptable level of service under all Colorado Boulevard grade crossing scenarios, regardless of whether the proposed grade separation was constructed.

This impact also does not fall within the purview of the Commission's authority over the Project's grade crossings. The Final Supplemental EIR # 1 indicates that the Fair Oaks Avenue and Colorado Boulevard intersection would be impacted beyond an acceptable level of service under either an at-grade or grade-separated crossing, due to trips generated by the Holly Street/Memorial Park station and ambient traffic growth in the area. Final SEIR # 1 at 4-27; Tr. 1377-78 (Frank). Since the traffic impacts at this intersection are not generated by the grade crossing, this significant impact does not fall within the scope of the Commission's review of the Project's Environmental Documents.